

ILLEGAL DISCRIMINATION AND UNLAWFUL HARASSMENT

INTRODUCTION:

ILLEGAL DISCRIMINATION AND UNLAWFUL HARASSMENT IN UTAH STATE GOVERNMENT

Illegal discriminatory conduct or unlawful harassment based on an individual's protected class status that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment will not be allowed or tolerated in Utah State Government.

Any form of Illegal Discrimination, Unlawful Harassment or retaliation against an employee or volunteer by an employee, a supervisor, a volunteer or others in the state system constitutes misconduct which undermines the integrity of the employment relationship and the dignity of the individual or individuals at whom the actions are directed. State employees and volunteers have the right to work in an environment free from unwanted and unwelcome illegal discrimination and unlawful harassment. Decisions regarding the provision of state services or activities cannot be made on the basis of illegally discriminatory criteria. No one is allowed to unlawfully harass any employee or volunteer. Employees or supervisors engaging in any illegal discrimination or unlawful harassment are subject to the imposition of disciplinary action up to termination of employment. Volunteers or others participating in this type of behavior are subject to the loss of their volunteer status or access to state operations.

Submission to or rejection of such conduct by an individual cannot be used as the basis for employment or other tangible job decisions affecting that individual.

DEFINITIONS:

Illegal Discrimination -

Any unlawful action taken by a supervisor or others in the employment situation, based on the protected class status (race, religion, national origin, color, sex, age, disability or other statutorily established criteria) of an individual that results in a tangible employment action against that individual that adversely affects that individual in terms of his or her employment, or employment opportunities or privileges.

Unlawful Harassment -

Any behavior or conduct based on an individual's protected class status which is pervasive, unwelcome, demeaning, ridiculing, derisive, or coercive and results in a hostile, abusive or intimidating work environment. Not every negative work environment may be attributed to unlawful harassment. In order to make a valid claim the harassment or discrimination must be

based on one or more of the protected class statuses and the behavior must be “sufficiently severe or pervasive as to alter the conditions of the victim’s employment and create an abusive working environment”.

Protected Classes -

Title VII of the *1964 Civil Rights Act* as amended by the *Civil Rights Act of 1991*, the *Age Discrimination in Employment Act of 1967*, the *Americans with Disabilities Act of 1990* and other Federal and State statutes have determined that discrimination on the basis of an individual’s *race, religion, national origin, color, sex, age over 40 and disability or other statutorily established criteria are illegal.*

Sexual Harassment

In 1980, the Equal Employment Opportunity Commission (EEOC) identified sexual harassment as a form of sex discrimination, which is prohibited. Sexual harassment has been defined as sex discrimination when:

The victim is harassed because of his/her sex.

The harassment affects a term, condition or privilege of employment.

Retaliation -

The Equal Employment Opportunity Commission has forbidden taking retaliatory action against anyone who utilized or participated in the complaint processes that have been established. To establish a claim of retaliation a complainant must first establish that he / she engaged in:

- 1. Opposition to illegal discrimination or participated in covered proceedings;***
- 2. Experienced some type of adverse action; and,***
- 3. Is able to establish a causal connection between the protected activity and the adverse action.***

Employees can make a separate claim of retaliation independent of their original claim of illegal discrimination or unlawful harassment. Because the rules and guidance from the EEOC are somewhat complex, employees are encouraged to meet with a knowledgeable individual to discuss what they believe is retaliation before filing a specific complaint.

Tangible Employment Action -

A tangible employment action is defined by the United States Supreme Court as “a significant change in employment status.” A tangible employment generally requires a supervisor to bring his or her official power or authority within the organization to bear on a subordinate and inflicts direct economic harm on him or her.

Examples of tangible employment action include the following:

Hiring and Firing
Promotion or Failure to Promote
Demotion
Undesirable Assignment
A decision causing a significant change in benefits
Compensation decisions
Work Assignments

Tangible employment action does not include insignificant changes in duties such as a change in job title without a change in salary, benefits or duties.

Unlawful Hostile Environment -

A work environment or work-related situation in which an individual suffers physical or emotional harm due to the behavior of another that is motivated by the individual's protected class status. In order for a work environment to be considered to be an actionable unlawful hostile environment the behaviors that are allegedly causing the hostile environment must be based on an individual's protected class status and must be sufficiently **severe, persistent, pervasive and objectively offensive** as to alter the conditions of a victim's employment and create an abusive working environment.

Generally a single incident, single comment or other isolated incident will not be enough to create an unlawful hostile environment.

The determination of whether or not a work environment is unlawfully hostile can only be made by looking at the totality of circumstances in the work site from the point of view of a reasonable person situated similarly to the complainant, in terms of his or her race, religion, national origin, sex, age, color or disability.

**DISCRIMINATION and / or UNLAWFUL HARASSMENT ON THE
BASIS OF RACE, RELIGION, NATIONAL ORIGIN, COLOR and/or
SEX**

In 1964 the Congress of the United State passed and President Johnson signed into law the *Civil Rights Act of 1964*. Title VII of this act forbade discrimination by employers, labor unions, employment placement companies and services and others in the employment sector on the basis of an individual's race, religion, national origin color and / or sex. Tangible employment action taken against an employee because of the factors stated above is illegal and constitutes illegal discrimination. For example refusing to hire someone for a particular job based on his or her ethnicity alone is a form of illegal discrimination. Decisions as to the factors to be used to make

employment-based decisions must be based on the nondiscriminatory factors not on personal biases or illegal premises.

Harassment of an employee based on the factors listed above that is severe, persistent, pervasive and objectively offensive constitutes unlawful harassment. For instance jokes about someone's religious beliefs that severe, persistent and pervasive and are offensive to an objective observer constitute unlawful harassment and are forbidden both by statute and policy.

DISABILITY DISCRIMINATION AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

Recent decisions by the United State Supreme Court and the 10th Circuit Courts of Appeals have changed the monetary liability of the State of Utah for violations of certain sections of the Americans with Disabilities Act. It is the intent of Utah State Government however to continue to attempt to provide reasonable accommodations for employees who meet the criteria established by the ADA and state statute and to follow other applicable provisions of the act..

If you feel that because of a disability you need a specific accommodation in order to perform the duties of your job, you should contact your agency's ADA coordinator. The ADA coordinator will be able to inform you of the requirements or other actions necessary to process a request for an accommodation. You are encouraged be prepared to provide medical proof of disability, and have an accommodation in mind that you feel with assist you in performing the duties of your position when you meet with the ADA coordinator.

If you feel that you have been illegally discriminated against or that you have been subjected to the creation of an illegally hostile environment because of your disability you should follow the established complaint procedure for complaints of illegal discrimination and / or unlawful harassment.

SEXUAL HARASSMENT

Sexual harassment is a form of sexual discrimination and as such is covered under the provisions of Title VII of the Civil Rights Act of 1964. Because of the volume of cases that have been litigated in the past decade and a half and the impact that both policy and case law have had on the operations of governmental entities, it is important for employees, supervisors and volunteers of the State of Utah to understand their rights and responsibilities regarding this area of law.

The EEOC has defined sexual harassment to include **unwelcome sexual advances**, requests for sexual favors or other verbal or physical conduct of a sexual nature where:

Submission to such conduct is made either explicitly or implicitly a term or condition of employment.

For specific information regarding the forms of sexual harassment please see Appendix I

WHAT TO DO ABOUT ILLEGAL DISCRIMINATION and / or UNLAWFUL HARASSMENT:

The Employee or Other Complainants:

Each employee should recognize illegal discrimination or unlawful harassment when it happens. Understand it does not "come with the job." It is against the law and state policy, and does not have to be tolerated.

Individuals affected by illegal discrimination or by unlawful harassment are afforded a number of avenues for filing complaints which are free from bias, collusion, intimidation, or reprisal. Individuals who feel they are being subjected to illegal discrimination or unlawful harassment or illegal retaliation should do the following:

Continue to report to work and to perform normal work activities or functions.

Document in writing specific information about the occurrence(s); identify such things as time, date, place, what was said and by whom, and any other relevant circumstances surrounding the event(s).

Identify a witness or witnesses to the discrimination or unlawful harassment.

You are encouraged to verbalize disapproval of the action to the perpetrator and demand that it cease, but there is no legal requirement that you notify the alleged perpetrator that the behavior is unwelcome.

Employees who feel that they or others are being subjected to illegal discrimination or unlawful harassment are encouraged to use internal agency or DHRM complaint procedures. A complaint of illegal discrimination or unlawful harassment may be submitted directly to the agency, to the Utah Anti-Discrimination and Labor Division (UALD), or the Federal Equal Employment Opportunity Commission (EEOC).

Complaints may be submitted by any individual, witness, volunteer, or another employee.

Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines,

Any supervisor who has knowledge of illegal discrimination or unlawful harassing behavior shall take immediate, appropriate action and document the actions taken,

An employee or volunteer may unknowingly be encouraging the alleged harasser by laughing at his/her jokes, agreeing with his or her statements, or by flirting. This behavior can lead the harasser to think he or she really enjoys this type of attention at work. If you find the behavior to be unwelcome, you are encouraged to inform the individual of your feelings. **The employee is not required to confront your harasser before filing a complaint.**

When in doubt about whether a behavior constitutes harassment, or what the employee should do if he or she feels that he or she has been subjected to illegal discrimination or harassment, he or she is encouraged to talk with staff from the agency's human resource section or other knowledgeable individuals. Because of recent court decisions certain types of claims of illegal discrimination or unlawful harassment that heretofore could be brought seeking monetary damages in the federal courts, may no longer be available to state employees. Employees are advised to learn about these changes or to consult a knowledgeable individual or legal counsel.

After filing a complaint or taking other actions in opposition to illegal discrimination, unlawful harassment, or after participating in covered activities some type of adverse action is taken against the employee for his / her opposition or participation in covered proceeding regarding a claim of illegal discrimination or unlawful harassment he or she may file a separate claim of retaliation. Retaliation against an individual for opposing an illegal or unlawful practice or for participating in covered activities is against the law. (See the definition of "Retaliation" at the beginning of this document for a better understanding of the elements of this process.)

The Supervisor:

A supervisor or manager should have sensitivity and awareness of illegal discrimination and unlawful harassing behavior. He or she must understand that illegal discrimination, unlawful harassment or retaliation are not in anyone's job description. If he or she participates in any of these activities he or she may be placing himself or herself outside of the protections provided under the *Utah Governmental Immunity Act*. In these situations the State may not defend or indemnify the harassing or discriminating supervisor in any legal proceedings. Every supervisor or manager must recognize that illegal discrimination is against the law and that unlawful harassing behavior may create a hostile work environment which will result in lost productivity for the entire unit, as well as being illegal. Supervisors must recognize that employees have the right to file complaints or to participate in covered activities to resolve complaints. Supervisors or managers must never retaliate against an employee for the exercise of his or her rights. If a supervisor retaliates, a separate claim of retaliation can be filed against him or her.

Any complaint of illegal discrimination and / or unlawful harassment or retaliation must be taken seriously and must be acted upon immediately. If a supervisor or manager knows or should know that illegal discrimination, unlawful harassing behaviors or retaliation are occurring in the work unit and fails to take timely action to correct the situation, he or she can be subject to corrective or disciplinary action.

A supervisor's responsibility is to attempt to resolve illegal discrimination and / or unlawful harassment complaints at the lowest level, if possible. Under all circumstances the supervisor will need to conduct a preliminary review or complaint intake process with the complainant and the alleged harasser.

In conducting a preliminary review the supervisor or manager is encouraged to:

Interview the complainant. Get all the facts of the alleged incident(s). Obtain answers to the basic five interrogatory questions: who, what, when, where and how. Do not at this point attempt to find out why the alleged discrimination or harassment is occurring.

Get a clear description of the behavior. Determine if the behavior was unwelcome and if the behavior appears to be based on the complainant's protected class status.

Determine what the complainant wants to have occur to correct or remedy the situation. Document the conversation.

*Instruct the complainant not to discuss the alleged behaviors with the alleged harasser or with other staff. Keep all notes in a **CONFIDENTIAL** file. Ultimately the agency's Human Resource office or State DHRM will maintain this file as a confidential file. The supervisor or manager should not attempt to create duplicate files.*

The supervisor should contact the agency human resource office (HR) and inform them of the facts that have been obtained. Based on the facts that have been gathered the human resource office may assume responsibility for the investigation. The supervisor or manager should discuss with HR whether the alleged harassment is of a serious nature, whether it constitutes a tangible employment action, illegal discrimination or unlawful harassment and whether the claim should be forwarded for formal investigation to human resources.

If the agency human resource office feels that it is appropriate, the supervisor may be asked to interview the alleged harasser and inform him/her a complaint of illegal discrimination or unlawful harassment has been made. The supervisor should inform the alleged harasser that if the behavior(s) has/have occurred, they must stop immediately. The supervisor should get all the facts and document the conversation. Depending on the situation and the facts gathered the supervisor may want to consider corrective or disciplinary action.

After talking with the human resource office the supervisor may be asked to report back to the complainant what has been done and that the behavior is expected to stop. If a supervisor did not talk with the complainant, someone from human resource should make this contact. It is important that the complainant be informed in a timely fashion of what is occurring with regard to his or her complaint.

The complainant should be asked to inform the supervisor or other management level staff immediately if the behavior does not stop or if reprisals are taken.

If the complainant is not satisfied with the results of the preliminary review, and/or the behavior does not stop, the complainant and/or the supervisor may refer the complaint to the agency's human resource office or DHRM for formal investigation.

For specific details regarding questions to ask and other responsibilities in the preliminary review process, consult the agency human resource office or DHRM.

Supervisors are discouraged from interviewing witnesses or performing formal investigations, unless formally authorized to do so. These functions are to be performed by a team of investigators. Please consult your Human Resource office or DHRM for more information.

The Observer or Witness (Third Party):

If a third party sees illegal discrimination or unlawful harassment, he or she should talk to the victim and let him/her know that he or she is aware of what is happening. The third party should assure the victim he or she will be there for support if needed, and that he or she would be willing to talk to the harassed employee's supervisor.

The third party should let the supervisor know in strict confidence of the unwelcome behavior that has occurred.

As an observer, the third party individual may file a complaint of illegal discrimination or unlawful harassment if he or she observe inappropriate behavior, speech or conduct in the work area. Behaviors that target an individual's race, religion, national origin, color, sex, age or disability are probably forms of illegal discrimination or unlawful harassment and should be reported.

The Discriminator or Harasser:

Everyone needs to increase his or her level of sensitivity and awareness concerning the impact of individual actions and comments on other employees. Co-workers may not appreciate hearing inappropriate stories or innuendoes, being asked inappropriate questions about their sex, race, religion, national origin, color, age or disability. Furthermore, a victim's self esteem and his/her work performance may be adversely affected if another employee displays inappropriate behavior toward a coworker, volunteer, client or anyone else.

Supervisors should not assume that employees will tell them when they do or say something that is offensive or unwelcome to them. Few employees will have the courage to tell a supervisor or manager to stop saying or doing something. Supervisors must be aware of their behavior and they should foster an environment of openness of communication in the work unit.

Remember, illegal discrimination and unlawful harassment are against the law, and can result in significant personal, financial and legal liability. Illegal discrimination and / or unlawful harassment are outside of everyone's scope of employment. In addition they are malicious acts and the state cannot defend or indemnify an employee or supervisor who commits these acts or engages in these activities. Violators will be subject to disciplinary action, such as suspension, demotion or dismissal. Violators may also be subject to criminal prosecution.

COMPLAINT PROCEDURE

If you feel you are being subjected to illegal discrimination or unlawful harassment, you should do the following:

Continue to report to work.

Verbalize your disapproval of the action(s) to the perpetrator and demand that it cease.

Document the occurrence(s), identifying such things as time, date, place, what was said, and any other relevant circumstances surrounding the event.

Identify a witness.

If the unwelcome action continues, or in cases of serious physical incidents:

Submit either a verbal or written complaint directly to your immediate supervisor. However, in cases where the supervisor is the harasser, make your complaint to the supervisor's supervisor, your agency's human resource office, or directly to the Department of Human Resource Management (DHRM). Complaints may also be made directly to the Utah Anti-Discrimination Division (UALD) or to the Equal Employment Opportunity Commission.

It is the supervisor's responsibility, once a complaint has been received, to take immediate action to stop the unwelcome behavior. A preliminary fact-finding review may be required.

If you find the supervisor's actions have not been sufficient to resolve the problem, submit a written complaint to your agency's human resource office, or the DHRM. Upon receiving this written complaint, a team of investigators will be directed to conduct a formal investigation into the matter. The findings at the conclusion of this investigation will be submitted by the investigative team to the agency head who will then take action as appropriate.

CONCLUSION

This material has been prepared to provide a brief introduction and overview of your rights and responsibilities as a manager or supervisor, employee or volunteer in the Utah State system.

Employee Name _____

Date of Training _____

I certify that I have read the material contained in this booklet and have had an opportunity to have my questions regarding issues surrounding Illegal Discrimination and Unlawful Harassment addressed.

Signature

APPENDIX I

SEXUAL HARASSMENT DETAIL

Types of Sexual Harassment

Tangible Employment Action Sexual Harassment - Formerly Called “Quid Pro Quo Sexual Harassment.”

(See the Definition Section for a general definition of this term.)

Economic or other tangible actions taken against an employee for his or her failure to comply with the sexual or sex-based requests of a supervisor or other individual with the power to grant or deny economic or tangible benefits. For example, a supervisor who directly or indirectly conditions a job benefit such as hiring, good performance evaluations, promotions, or salary increases in exchange for sexual favors is taking tangible employment action against an employee based on his or her sex.

(Note: The term “Quid Pro Quo Harassment” was generally replaced by the United State Supreme Court with the term “Tangible Employment Action.”)

Hostile Work Environment Sexual Harassment:

Unwelcome sexual behavior that makes the workplace offensive, hostile, or intimidating or unreasonably interferes with an individual's work performance.

Levels of hostile work environment include:

Level I: Sex Role Stereotyping

Behavior based on a person's gender which is demeaning, ridiculing, or derisive and involves unequal treatment of an individual because of that individual's sex. An example would be always assigning certain tasks based on the sex of an individual.

Level II: Targeted Gender Harassment / Discrimination

Discrimination that is visual or verbal. Displaying demeaning posters, cartoons, nudity, or offensive sexual jokes about a particular gender are examples of gender abuse.

Level III: Targeted Individual Abuse

Visual or verbal gender abuse directed at a specific individual. This form includes: questions about a person's sexual behavior; comments about a person's body; conversations filled with sexual innuendoes, propositions, threats, sexual insults, or lewd remarks; and sexually suggestive pictures, posters, cartoons, or objects displayed in a work area which are directed toward a specific person.

Level IV: Criminal Touching

The pat, touch, pinch standard. Intentional touching of the buttocks, genitals, or breasts; or actions not involving physical touching, but which are offensive to the extent that they visually or emotionally shock the conscience of a reasonable person.

APPENDIX II

ILLEGAL DISCRIMINATION AND UNLAWFUL HARASSMENT EXAMPLES

The following are examples of illegal discrimination / unlawful harassment in its direct and indirect forms. The examples of the blatant discrimination clearly rise to the necessary level to constitute grounds for a complaint to the Equal Employment Opportunity Commission and /or the Utah Anti Discrimination and Labor Division. Ultimately if the complaints cannot be resolved they may lead to a Federal lawsuit. The subtle forms of discrimination / harassment may or may not be “sufficiently severe, persistent or pervasive to create an unlawfully hostile environment and to alter the conditions of the victim’s employment”, but they clearly are inappropriate for the work site and constitute a violation of the State’s and most department’s policies. These inappropriate actions may also be grounds for disciplinary / corrective action to be taken against the perpetrator. While the subtle examples may not seem to be as egregious, they are still illegal and represent a violation of policy and affect the work productivity of the victims. It is also important to understand that if the inappropriate actions or activities continue or rise to a sufficient level they may also provide the grounds for a successful lawsuit against the employer.

THE EXAMPLES ARE AS FOLLOWS:

Racial Discrimination and Harassment

Blatant Discrimination -

An employer tells a potential employee “We are sorry but we can’t hire people like you. We have too many staff who refuse to work with people of your race. They have stated that if we hire any more (racial epithet) they will all quit. We can’t afford to lose our long time employees and we hope that you will understand.”

Subtle Discrimination / Harassment

An employer tells a new employee who is Hispanic, “We are glad to finally have someone like you working for us. The fact that you are Hispanic and speak Spanish is a real advantage. You are being assigned to customers in area X. With all those Hispanic businesses down there, we really think that we can see a strong increase in sales now that they have one of their own as a customer representative.”

Religious Discrimination

Blatant Discrimination / Harassment

Supervisor in a memo to subordinate staff states: “As you all know, this country and this company / agency / school district were founded by good Christian men. We all know that we need God in our lives and that now with the world in chaos we need all the help we can get. With this in mind next Friday there will be a prayer breakfast that all staff members are required to attend. I have asked (Reverend _____ or Father _____ or Bishop _____) to lead us in prayer. There is no excuse for not having God in your life.”

Subtle Discrimination / Harassment

An employer to coworker; “My religious study group is meeting in the lunch room today and I would really like you to attend. It would be good for you. I know that you have told me before that you are not interested in my religion but I am concerned about your soul and my religion requires me to do all that I can to convert people like you and to save your soul.” This conversation has occurred on at least three different occasions. In all cases the invited employee has tactfully but firmly told the other employee that she was not interested.

National Origin / Color Discrimination

Blatant Discrimination / Harassment

An employer to an employee of Middle Eastern origin: “We are going to have to terminate your employment. Ever since September 11th we have had complaints about you from customers and some coworkers. They don’t trust people like you or anyone else from the Middle East. It just doesn’t pay to have somebody from the Middle East working for us. We can’t stand to lose any more customers when the economy is in the toilet.”

Subtle Discrimination / Harassment

Employee speaking to a coworker, who is a recent immigrant from Southeast Asia, states the following: “I had a run in on the freeway with some of your people. This Asian girl cut me off and almost forced me into the median. You people really should take the time to teach each other how to drive before you kill someone.”

Sexual Discrimination and Sexual Harassment - (Even though sexual harassment is a form of sexual discrimination, for the sake of understanding the two have been separated to clarify the distinctions between the two.)

Sexual Discrimination

Blatant Sexual Discrimination / Harassment

Supervisor to an employee who is a female school bus driver; “We have decided not to let you and any of the other female drivers take these long overnight trips. The Superintendent feels that you need to be home with your families. After all, your husband is working so you do not need the additional overtime from driving these trips.”

Subtle Sexual Discrimination / Harassment

A Male party committee chair to female coworkers; “Each of you will bring a casserole or other main dish for the party. The last time we asked the guys to bring anything we ended up with eight bags of ice and a few bags of potato chips, and nothing else. After all you girls do a great job of cooking and I can tell that you are all good cooks just by looking at each of you.”

Sexual Harassment

Blatant Sexual Harassment

Supervisor approaches a female subordinate and states; “My wife is out of town this weekend lets get together for a little fun. You know that you owe me because I got you that last promotion. If you are not willing to reciprocate then you may find life a lot harder around here and you know that I will be doing your performance appraisal.” The female employee refuses to go along with her supervisor and is fired after a negative performance evaluation from the harassing supervisor.

Subtle Sexual Harassment

An employee accesses pornography on his computer and constantly calls others from the office to his cubicle to display his latest discovery. A female employee walks past the cubicle sees the picture and reports it to her supervisor who agrees to look into the problem, but does nothing. The perpetrator continues to access pornography on the State’s computer and nothing is done.

Disability Discrimination / Harassment

(It should be noted that recent Supreme Court decisions have removed state governments from monetary losses for violation of Title I of the Americans with Disabilities Act. Utah State employees and employees of Higher Education can still file complaints with the State Anti-Discrimination Division and if successful can recover back pay and attorney’s fees, but cannot file in Federal Court for monetary damages.)

Blatant Discrimination

A supervisor talks with a potential applicant who is in physically disabled and uses a wheelchair. The supervisor states the following: "You have excellent qualifications for the position but I am afraid with all of the budget cuts and the rising cost of health insurance we can't hire anyone who might pose a threat of costing us more money. I hope that you understand that we must protect the bottom line."

Subtle Discrimination / Harassment

An employee to a coworker who is legally disabled has requested and received an accommodation to assist him in performing the essential functions of the job. As part of this accommodation, duties within the unit have been shifted to other staff. One of the disabled employee's co-workers confronts the disabled worker and states the following; "If you can't do the job, why don't you just go on disability. I am sick and tired of having to do the work for people like you. I have enough to do without having to carry around people who can't do the work."

Age Discrimination / Harassment

(It should be noted that recent Supreme Court decisions have removed state governments from monetary damages for violations of Federal *Age Discrimination in Employment Act*. Utah State employees and employees of Higher Education can still file complaints with the State Anti-Discrimination Division and if successful can recover back pay and attorney's fees, but cannot file for monetary damages in Federal Court.)

Blatant Discrimination / Harassment

During the preparation of a Reduction in Force Plan (RIF) agency management decides to get rid of all of the highest paid employees in the unit. The highest paid individuals in the unit also happen to be the employees with the most seniority, all of whom are over 40 years of age. The RIF is done strictly on the basis of highest salary and impacts only the older workers.

Subtle Discrimination / Harassment

An information tech support worker, less than thirty years of age, approaches an older worker and states the following: "You old timers really should learn how to use your computers the right way. I am sick and tired of having to clean up your messes. If you can't do the job, don't blame the Computer Section. Maybe it is time for your generation to retire and get out of the way."

To the Trainer

Each of the examples can be used to illustrate a form of illegal harassment and may serve as a discussion point for the group. For instance the trainer or moderator may ask the class “What assumptions are being made by the employer when he or she makes the statements.” Or the trainer may ask “ The employer did not mean to discriminate or to create a hostile environment for the employee, if there was no intent does this still constitute harassment?” The trainer should be prepared to address both blatant and subtle harassment